

Customer No. 22,852
Attorney Docket No. 09242.0178

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,403,687 B2)
Issue Date: July 22, 2008) Group Art Unit: 2839
Inventor: Smith et al.) Examiner: K. M. NGUYEN
Application No.: 10/023,713) Conf. No. 6867
Filed: December 21, 2001)
For: REINFORCED TIGHT-)
BUFFERED OPTICAL FIBER)
AND CABLES MADE WITH)
SAME)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (PTO) issued the subject U.S. Patent No, 7,403,687 (the '687 patent) with a patent term adjustment of 762 days. Applicants paid the Issue Fee on June 19, 2008, and agreed with the PTO's determination of patent term adjustment of 762 days, provided the patent issued in a timely manner. The patent issued on July 22, 2008. The three year pendency date for determination of patent term adjustment is December 21, 2004.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 859 days which is the sum of 1310 days of patent term adjustment due to exceeding three year pendency and 1428 days due to U.S. PTO delay in prosecution or a total of 2738 days, minus 1213 overlapping days and 666 days due to applicant delay.

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PATENT
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AND CABLES MADE WITH)
SAME)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,403,687 B2 (the '687 patent) on July 22, 2008, with a patent term adjustment (PTA) of 762 days. Subsequently, on September 30, 2008, U.S. District

Court for the District of Columbia ruled in Wyeth v. Dudas that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 15, 2009

By: 

Ernest F. Chapman
Reg. No. 25,961

Customer No. 22,852
Attorney Docket No. 09242.0178

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Issue Date: July 22, 2008) Group Art Unit: 2839
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SAME)

Charge \$ 200

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

Sir:

1/15/09.

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (PTO) issued the subject U.S. Patent No, 7,403,687 (the '687 patent) with a patent term adjustment of 762 days. Applicants paid the Issue Fee on June 19, 2008, and agreed with the PTO's determination of patent term adjustment of 762 days, provided the patent issued in a timely manner. The patent issued on July 22, 2008. The three year pendency date for determination of patent term adjustment is December 21, 2004.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 859 days which is the sum of 1310 days of patent term adjustment due to exceeding three year pendency and 1428 days due to U.S. PTO delay in prosecution or a total of 2738 days, minus 1213 overlapping days and 666 days due to applicant delay.

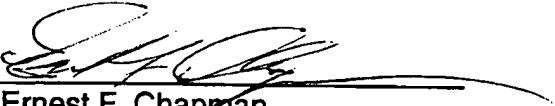
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If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 15, 2009

By: 

Ernest F. Chapman
Reg. No. 25,961

Enclosures
EFC/mld

10/023, #3. F. 12/21/01. issued 7/22/08 ^{LATE} ~~put~~ 1/15/19

12/21/01

12/21/04

3 yrs

12/22/04

7/22/08

Office

| X > 14 mo. | 215 | n.f. 9/24/08 | X > 3 mo 18. | 7/23/08. |
|------------|------|-----------------|--------------|------------|
| > 14 mo | 1213 | not all 3/20/08 | supp 648 | IDS 5/2/08 |
| | 1428 | | 666 | |

App

1213 overlaps. ($11/24/04 - 3/20/08$) check.

wants $1428 + 1310 - 1213 - 666 = 859$.

gets $1428 - 666 = 762$

PALM INTRANET

PTA Calculations for Application: 10/023713

| | | | |
|--------------------------|------------|-------------------------|------|
| Application Filing Date: | 12/21/2001 | PTO Delay (PTO): | 1428 |
| Issue Date of Patent: | 07/22/2008 | Three Years: | 0 |
| Pre-Issue Petitions: | 0 | Applicant Delay (APPL): | 666 |
| Post-Issue Petitions: | 0 | Total PTA (days): | 762 |
| PTO Delay Adjustment: | 0 | | |

File Contents History

| Number | Date | Contents Description | PTO | APPL | START |
|--------|------------|---|------|------|-------|
| 54.5 | 07/02/2008 | PTA 36 MONTHS | | | |
| 54 | 07/22/2008 | PATENT ISSUE DATE USED IN PTA CALCULATION | | | |
| 53 | 06/27/2008 | EXPORT TO FINAL DATA CAPTURE | | | |
| 52 | 06/25/2008 | DISPATCH TO FDC | | | |
| 51 | 06/25/2008 | APPLICATION IS CONSIDERED READY FOR ISSUE | | | |
| 50 | 06/19/2008 | ISSUE FEE PAYMENT VERIFIED | | | |
| 49 | 06/19/2008 | ISSUE FEE PAYMENT RECEIVED | | | |
| 48 | 05/02/2008 | FINISHED INITIAL DATA CAPTURE | | | |
| 47 | 04/15/2008 | EXPORT TO INITIAL DATA CAPTURE | | | |
| 45 | 03/20/2008 | MAIL NOTICE OF ALLOWANCE | 1213 | 34 | |
| 44 | 03/19/2008 | ISSUE REVISION COMPLETED | | | |
| 43 | 03/19/2008 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 42 | 03/18/2008 | ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING | | | |
| 41 | 03/18/2008 | DOCUMENT VERIFICATION | | | |
| 40 | 03/17/2008 | EXAMINER'S AMENDMENT COMMUNICATION | | | |
| 39 | 05/30/2006 | NOTICE OF ALLOWABILITY | | | |
| 38 | 05/02/2006 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 37.7 | 05/02/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | 648 | 34 |
| 37 | 05/02/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 36 | 04/07/2006 | IFW TSS PROCESSING BY TECH CENTER | | | |

7/21/08
5/21/08

| | | | | |
|------|------------|--|-----|----|
| | | COMPLETE | | |
| 35 | 04/07/2006 | DATE FORWARDED TO EXAMINER | | |
| 34 | 07/23/2004 | RESPONSE AFTER NON-FINAL ACTION | 18 | 21 |
| 33 | 03/29/2006 | MAIL NOTICE OF RESCINDED ABANDONMENT | | |
| 32 | 03/23/2006 | NOTICE OF RESCINDED ABANDONMENT IN TCS | | |
| 29 | 03/22/2006 | MAIL-PETITION TO REVIVE APPLICATION - GRANTED | | |
| 28 | 11/24/2004 | PETITION ENTERED | | |
| 27 | 04/08/2005 | CORRESPONDENCE ADDRESS CHANGE | | |
| 26 | 11/24/2004 | WORKFLOW INCOMING AMENDMENT IFW | | |
| 25 | 11/24/2004 | WORKFLOW INCOMING PETITION IFW | | |
| 24 | 11/17/2004 | MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION | | |
| 23 | 11/15/2004 | ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION | | |
| 22 | 07/23/2004 | WORKFLOW INCOMING AMENDMENT IFW | | |
| 21 | 04/05/2004 | MAIL NON-FINAL REJECTION | | |
| 20 | 04/05/2004 | NON-FINAL REJECTION | | |
| 19 | 01/30/2004 | DATE FORWARDED TO EXAMINER | | |
| 18 | 12/19/2003 | RESPONSE AFTER NON-FINAL ACTION | | |
| 17 | 09/24/2003 | MAIL NON-FINAL REJECTION | 215 | -1 |
| 16 | 09/22/2003 | NON-FINAL REJECTION | | |
| 15.7 | 10/03/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | |
| 15 | 10/03/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | |
| 14 | 08/25/2002 | RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS | | |
| 13 | 07/21/2002 | CASE DOCKETED TO EXAMINER IN GAU | | |
| 12 | 05/16/2002 | CASE DOCKETED TO EXAMINER IN GAU | | |
| 11.7 | 03/21/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | |
| 11 | 03/21/2002 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | |
| 10 | 12/21/2001 | MISCELLANEOUS INCOMING LETTER | | |
| 9 | 05/03/2002 | APPLICATION DISPATCHED FROM OIPE | | |
| 8 | 05/02/2002 | APPLICATION IS NOW COMPLETE | | |
| 7 | 04/12/2002 | ADDITIONAL APPLICATION FILING FEES | | |
| | | A STATEMENT BY ONE OR MORE INVENTORS | | |

| | | | | | |
|---|------------|---|--|--|--|
| 6 | 04/12/2002 | SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC | | | |
| 5 | 02/25/2002 | NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED | | | |
| 4 | 01/30/2002 | REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED | | | |
| 3 | 01/18/2002 | IFW SCAN & PACR AUTO SECURITY REVIEW | | | |
| 2 | 01/05/2002 | IFW SCAN & PACR AUTO SECURITY REVIEW | | | |
| 1 | 12/21/2001 | INITIAL EXAM TEAM NN | | | |

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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